

## REMARKS

Claims 1-3, 5-8, 10-17, 19, 20, 22-25, 28, 29 and 38-40 are pending in this application. Claims 28 and 29 are rejected. Claims 1-3, 5-8, 10-17, 19, 20, 22-25 and 38-40 are allowed. Claims 1 and 28 are currently amended. Reconsideration and further examination are respectfully requested.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,728,205 (Finn) in view of US 6,421,316 (Masuo). The rejection is based on an assumption that the source node 30a (figure 2) of Finn is equivalent to the claimed primary end system, and “nodes on the primary tree” are equivalent to the claimed protected end system.<sup>1</sup> The problem with that assumption is that the nodes on the primary tree are intermediate nodes, and the failure of an intermediate node is a different problem than the failure of an end system. The intermediate nodes in the network generally perform data switching functions. Provided resources are available in an alternate path, the data switching functions can be performed by different intermediate nodes. End systems perform the service functions for which the data is being transmitted, e.g., presentation, storage, or processing. If an Enterprise requires storage of a terabyte of data per day, for example, an intermediate node will not store that amount of data in the event that the primary storage site end system fails. Similarly, if the primary end system is an application server farm then an intermediate node cannot substitute for the loss of those servers if the primary end system fails. It should therefore be appreciated that altering the path between a source end system and a destination end system as described in Finn does not solve or even contemplate the problem of a failed end system. The rejection also cites Masuo at columns 9 and 11 as teaching the message for releasing resources in the path to the primary end system.

---

<sup>1</sup> The text of the rejection cites both features against the primary end system, which appears to be an obvious typographical error.

However, the cited columns describe release of a path in a point-to-multipoint connection. Consequently, the leaf terminals 203, 204, 205 described by Masuo are not equivalent to primary and backup end systems. More particularly, in normal operation all of Masuo's leaf terminals receive data, whereas the presently recited invention describes use of either the primary end system or the backup end system. Therefore, neither Finn nor Masuo, either alone or in combination, describe a path change from a primary end system to a backup end system. Claim 28 is currently amended to emphasize that in response to the detection of degradation or failure the apparatus sends both a release message to release light-path resources to the primary end-system and a setup request message to initiate use of the at least one backup end-system. Withdrawal of the rejection of claim 28 is respectfully requested in view of the above.

Claim 29 is allowable for the same reasons as claim 28. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Applicants' Attorney at the number listed below so that such issues may be resolved as expeditiously as possible. For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

May 4, 2009  
Date

/Holmes W. Anderson/  
Holmes W. Anderson, Reg. No. 37,272  
Attorney/Agent for Applicant(s)  
Anderson Gorecki & Manaras LLP  
33 Nagog Park  
Acton, MA 01720  
(978) 264-4001

Docket No. 120-179  
Dd: 05/05/2009